

Applicant : John David Fraser
Serial No. : 10/516,813
Filed : July 5, 2005
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Attorney Docket No.: 55502-007US1
Client Ref. No.: MK505162-003

REMARKS

The present document is submitted in reply to the final Office Action dated August 7, 2008 (“Office Action”). Applicant has amended claim 1 to promote clarity. No new matter has been introduced.

The amendment should be entered as it raises no new issues that will require further consideration or search and also does not touch the merits of the application within the meaning of 37 C.F.R. § 1.116(b).

Claims 1, 3, 4, 7, 10-13, and 18-20 are under examination. Applicant respectfully requests that the Examiner reconsider this application in view of the following remarks:

Rejection under 35 U.S.C. § 103

The Examiner rejects claims 1, 3, 4, 7, 10-13, and 18-20 under 35 U.S.C. 103(a) as being unpatentable over WO02/45739 (“WO ‘739”) in view of Parks et al., (“Parks”). See the Office Action, page 2, item 5.

Applicant pointed out in his reply filed on April 14, 2008 that WO ‘739, a published PCT application, is not citable under 35 U.S.C. 102 (a), 102 (b), and 102 (e), the only three statutory provisions pertinent to the citability determination of this reference. See Applicant’s reply, page 11, last paragraph to page 13, first paragraph.

In response, the Examiner indicates that Applicant must provide a clear statement explaining that WO ‘739 was Applicant’s own work in order to disqualify it as a 102 (e) reference.¹ See the Office Action, page 3-4, bridging paragraph.

Applicant submits herewith a declaration of Dr. John David Fraser, the sole inventor. This declaration points out that the relevant disclosure of WO ‘739 relied on by the Examiner is Applicant’s **own work**. As set forth in MPEP § 2136.05, “A 35 U.S.C. 102(e) rejection can be overcome...by submitting an affidavit or declaration under 37 CFR 1.132 establishing that the relevant disclosure is Applicant’s **own work**.” Pursuant

¹ The Examiner does not object to Applicant’s position that WO ‘739 is not citable under 35 U.S.C. 102 (a) and 102 (b) since WO ‘739 was published after the priority date of the present application. Applicant therefore will not re-address the citability of this reference under those two provisions.

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to the just quoted guideline, WO '739 is not qualified as a prior art reference under 35 U.S.C 102 (e).

Applicant thus submits that it is improper to rely on WO '739 to reject any claims in the present application for obviousness.

Applicant now turns to the remaining cited reference, i.e., Parks. As the Examiner correctly points out, this reference teaches that "ovalbumin is a well-characterized model antigen comprising defined epitopes that is useful for studying the immune response to vaccination." See the Office Action, page 3, first paragraph. Clearly, this reference has nothing to do with a construct containing a mutated superantigen SMEZ-2 coupled with an antigen (e.g., ovalbumin), which is the subject matter of rejected claims 1, 3, 4, 7, 10-13, and 18-20. Thus, with the removal of WO '739, Parks alone does not render these claims obvious.

In view of the above remarks, Applicant respectfully requests that the Examiner withdraw this rejection.

Rejection under 35 U.S.C. § 112, Second Paragraph

Claims 1, 3, 4, 7, 10-13 are rejected as being indefinite. More specifically, the Examiner states that the phrase "in use" recited in claim 1 is vague. See the Office Action, page 4, item 7. Following the Examiner's suggestion, Applicant has removed the phrase at issue, thereby obviating the Examiner's concern.

CONCLUSION

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any

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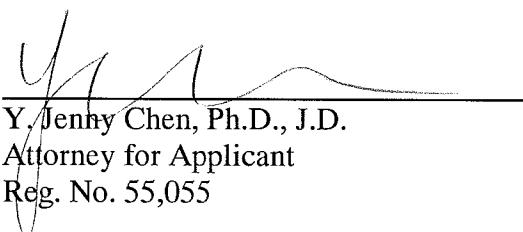
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claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

No claims fees are expected. Please apply any other charges to Deposit Account No. 50-4189, referencing Attorney Docket No. 55502-007US1.

Respectfully submitted,

Date: 11/07/08


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